



WirelessNorth, Inc.

The Future of Telephone Service

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August 28, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

RE: Reply Comments to:

WE Docket No. ~~96-148~~
GN Docket No. 96-113

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Dear Mr. Caton:

Enclosed for filing are the original and nine copies of reply comments on behalf of the 53 rural telephone companies who are owners of North Dakota PCS LP, a "C" block PCS license winner, Western Minnesota PCS LP, a "C" license winner; Southwestern Minnesota LP, a "C" winner and; Minnesota PCS LP, a DEF auction participant.

I am President and CEO of Wireless North Inc. a PCS management company providing auction support and contract management services of PCS operations to the above named "C" partnerships, and potentially to Minnesota PCS LP should it be successful in securing license(s) in the current DEF auction.

Thank you for your assistance.

Sincerely,


Michael P. Rappe

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**Before the
Federal Communications Commission
Washington, DC**

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**Response Comments
In the Matter of**

**Geographic Partitioning and Spectrum)
Disaggregation by Commercial Mobile)
Radio Service Licensees)
)
Implementation of Section 257 of the)
Communications Act)
Elimination of Market Entry Barriers)**

WT Docket No. 96-188

GN Docket No. 96-113

**Comments of Wireless North Inc. of behalf of: North Dakota PCS LP, Western
Minnesota PCS LP, Southwestern Minnesota PCS LP, Minnesota PCS LP**

These comments are submitted with individual concurrence on behalf of the above named entities.

Background

While there is some partner overlap, the above named partnerships are fully independent of one another sharing the only common attribute that all are consortiums of rural telephone companies. It is the intention of each of these partnerships to provide PCS services in the licensed territories secured through the PCS auction process. Each has a business plan that includes partitioning off the licenses to themselves and other rural telcos consistent with the FCC PCS rules and regulations and have contracted with Wireless North for auction assistance and management services in the subsequent build out and daily operation of the businesses.

As such, each have authorized Wireless North to file reply comments on their behalf and individually agree to the positions taken herein.

Position Summary

Having just finished reading the approximate 500 pages of comments of 30 respondents to the original NPRM and followed that with individual conversations with representatives of the control groups of each of the above partnerships, **we are pleased to see that the Commission has begun to realize that the circumstances necessary for the provision of PCS services in rural BTA markets is often substantially different than in more urban territories.**

Specifically, in urban and highly competitive markets the Commission is tasked with insuring fair opportunity and fostering competition. But in rural geographies, the challenge is to prevent obstacles, no matter how well intended, that facilitate at least some entity willing to take the economic risk and provide PCS services to rural America.

In general, we observe that respondents representing large well funded A,B or C license enterprises are in favor of a maximum liberalization of the present rules on both Partitioning and earlier than planned disaggregation of spectrum, and while their rhetoric is couched in "good for the citizen/consumer/competition" etc. language; **we simply remind the Commission to accept such comments with the skepticism they are due,** and to not forget that many of these entities have a history of using Commission rule changes to self serving, and anti-competitive advantage. (See the enclosed comments on a specific example regarding this proceeding.)

Approximately 1/3 of the original respondents represent the interests of rural telephone companies, either directly or as an association such as OPATSCO. A careful reading of those comments will show that there is not complete agreement among the telcos on this Notice of Proposed Rule Making; but a still closer reading reveals several common threads:

1. **In rural territories where the issue is providing PCS services to sparse populations, simple economics dictate that rural telephone companies are the entities most capable of providing viable ongoing service.** This understanding is reflected in the Commission's existing PCS rules including the original Partition rules which provide participation opportunity solely for rural telephone companies. **Those telco's who, for their own reasons, did not choose to participate directly in the auction(s) tend to favor the proposal to immediately allow disaggregation of spectrum, feeling this will allow them PCS opportunity beyond Partitioning.**

We cannot support this position because there is a flip side. Specifically, those telcos who DID choose to participate in the auctions at considerable risk and expense, did so after careful consideration of the rules in place. Those rules dictate, among other items, competition levels which in turn were a part of careful assessment of the economic viability of PCS in sparsely populated markets.

By changing the disaggregation of spectrum time frame and allowing entities such as existing cellular providers immediate access to PCS spectrum that they did not have to compete at auction to acquire, those rural telcos who DID commit to millions in license payments to the Commission are financially harmed. (See enclosed press release from the 8/27/96 Minneapolis Star Tribune, and related comments.)

A rule change allowing immediate disaggregation has the real (not hypothetical) impact of introducing a competitor now who, under the rules in place when the decision to pursue these licenses was made, was not one. AND, said competitor(s) are often in a position (given a relationship with an A-B license winner) to bring service to market faster than is possible for the "C" licensees who still await the granting of their licenses.

Said plainly, changing the rules now has the real probability of harming C & F license winners in rural markets who formulated their plans and committed to millions of dollars in payments only to find the worth of their licenses devalued by allowing added competition through unanticipated rule changes.

The Commission should retain the present disaggregation rules and time frames to allow owners rural of C and F licenses the chance to work their business plans and be in a better success position to meet their FCC payment obligations before introducing still more competitors.

2. There is near universal agreement that the existing Partition rules along "geo-political boundaries", i.e. county lines, is too restrictive.

We agree. The serving territories of rural telephone companies seldom match such boundaries and the rules could be amended to add flexibility.

3. On the question of extending Partition rights to entities other than rural telcos, opinions among the respondents is mixed.

While we applaud the Commission's intent to provide added opportunity to those who claim prices in the "C" auction precluded certain smaller entities from participation in PCS; especially as it applies to the more rural BTA's, the evidence does not support that a problem exists.

For example, in the present D,E,F auction, only 153 bidders successfully registered for 1479 licenses. Granted, we are in the earlier stages of this auction, but in the rural licenses we are tracking with three licenses available for each BTA, a full 25% of the available licenses received NO BIDS AT ALL in the first round and many more, bids like \$11. Not \$11 per POP, but \$11 for the entire license!

We believe that keeping the Partitioning rules now in place is the best course for the Commission to follow. By the Commission's own original reasoning, providing a partition opportunity for rural telephone companies only, as the most viable existing entities capable of effectively providing service in rural markets, still makes good sense.

While we acknowledge that there are other entities perfectly capable of creating a PCS business; market realities are such that an existing license holder will tend to retain the better markets within a licensed territory for its own; tending to only partition off the less lucrative parts to others, and it may be only the telephone company who has the existing infrastructure and customer base to make a viable business out of these lesser opportunity territories.

But, we also acknowledge that there may be sufficient exceptions that the Commission may wish to liberalize the Partition rules somewhat.

Amending the existing rules by adding the provision that C and F licensees ONLY may partition to entities other than rural telcos would provide sufficient opportunity to those entities claiming economic preclusion from licenses.

Such an action would prevent, or at least lessen, the probability that the A-B winners with their already substantial advantages could use the Partition to provide access to PCS spectrum and technology to entities such as dominant cellular providers or others, both improving their advantage over the "C" competitors from a buildout and service perspective, and hurting the "C" and "F" entrepreneurs ability to succeed by capturing segments of the limited potential customer base before the "C-F" licensee has an opportunity to construct service.

Broadening the Partition ability beyond just rural telcos has also been suggested, and our position is that this is a less viable option. Not because we feel that rural telcos are the only answer, but rather that we have concerns about the cost, and complexity of administration including the default risks that other respondents have pointed out. **Said plainly, we believe that any entity other than telcos with the necessary economic staying power to make a business out of the lesser potential territories that lend themselves to partitioning, are entities with sufficient resources and skills to have been auction participants in the first place.** Thus we cannot whole heartedly endorse this suggestion, even though it might be in our best interest to be able to partition to other entities than telcos.

Supportive Detail

1. The comments of respondents to the Proposed Rule Making who represent the interests of large businesses who are A,B or C license winners, and who are advocating maximum liberalization of the rules, are primarily self serving, and are NOT advocating change that is in the best interest of the provision of viable PCS services in rural and small town America.

Approximately two years ago, when the rules for the PCS broadband auctions were finalized to the point that the Minnesota based rural telephone companies could form their plans to participate by forming these several independent bidding consortiums, US West began soliciting these same telcos with a plan of their own.

Specifically, USW promised that they would enter the PCS auctions and win licenses, and if the telcos would give USW money to do so, those telcos would receive PCS operating authority for parts of the licenses.

The actions of US West had the effect of reducing the number of telcos willing to join the independent telco bidding consortiums, with the (deliberate?) side benefit to USW of reducing these consortiums bidding power.

The promises of USW (This author personally attended a USW presentation to telcos on the topic) did not conform to the partition rules OR to the disaggregation rules, and when asked; the USW spokesperson assured the telcos that USW was seeing to the problem by a focused lobbying effort at the FCC to get the spectrum cap for cellular, the partition and the disaggregation rules changed to accommodate the USW plan.

It was not surprising that the attendees, all long experienced telco managers, accepted as fact that USW was powerful enough to influence the Commission in this way; and the ensuing anecdotal evidence seems to support their attitude. (The wireless ownership spectrum caps have already been raised; multiple “insiders” have counseled that the minds of the Commission staff are already made up on the partition and disaggregation rule changes, telling this writer my time is wasted in even bothering to file these reply comments; and in a conversation about the Rural Cellular Corp. issue to follow, I was told the Commission has already assured RCC/APT that their filing will be approved!)

We strongly believe that “The Rule of Unintended Consequences” will apply if the Commission changes the Partition and Disaggregation rules at this critical point in the PCS auction/capitalization/buildout process.

Our point is that while the NPRM’s proposed changes might have good “sound bite” appeal, it has the potential to do great harm to “C” licensees in the smaller, more rural markets with far greater negative consequence potential than any benefit presented by any respondent to this NPRM.

To provide a real example of this point, we have enclosed a copy of a press release that appeared in the August 27, 1996 Minneapolis Star Tribune.

As you can see, American Portable Telecommunications (APT) and Rural Cellular Corporation (RCC) have signed a letter of intent to provide PCS service in certain territories within the Minneapolis MTA, and they were so confident that the Commission would approve the disaggregation plan and allow this venture to happen that they have publicly announced the plan.

The North Dakota PCS LP "won" the Fargo and Grand Forks "C" licenses by committing to pay the FCC \$8,675,559 over the next decade, which with interest will total approximately \$13 million dollars.

If disaggregation is allowed to A-B licensees such as APT, the result is RCC gains access to PCS in Fargo and Grand Forks for no payments to the FCC. And,

North Dakota PCS LP has a very valid case under contract law that it's commitment to purchase these licenses is null and void because the seller (FCC) changed the terms and conditions of the sale. Does the Commission fully understand the implications on the "C" revenues if only one entity were to succeed in court on this point and find that the awarding of ALL "C" licenses is invalid?

2. Existing Partition rules are too geographically restrictive.

We believe there is sufficient concurrence on this point, that no added discussion is necessary except to add that conversations with Commission staff have led us to believe that any reasonable partition request under the current rules would accommodate adjustments to the "county line" boundaries. Further that it is better to have this boundary as a base from which to review individual requests, than to further burden the Commission with a multiplicity of territory division plans with no common base line as a start point.

Therefore, we believe keeping the status quo is a reasonable position for the Commission to take.

3. No change to expand partitioning to entities beyond rural telcos is necessary.

We continue to make the point that in general, because partitions will be naturally considered for less lucrative portions of the licensed territories, the risk to the Commission is high that any entity other than the local telephone company is unlikely to have the existing infrastructure to successfully deploy and operate a PCS service.

The evidence does not support a lack of opportunity by any type of small business entity to have participated in the auction process.

There are other ways, ie. resale agreements, franchises etc. that an entity could gain territorial access to PCS besides Partitioning, And

Such agreements would cause the license holder to maintain compliance over the buildout and operation of such "sub-license" arrangements instead of shifting the burden to the Commission, And

Again considering "The Rule of Unintended Consequences" maintaining the status quo avoids the real issue that with Partitions off loading the Commission mandated build out/POP coverage requirements from the license holder to the partitionee, **a result could actually be fewer rather than more citizens having access to PCS technology** as the original licensee can now meet the build out requirement of the license by building service "downtown"; the partitionee builds the small town, and the suburbs are left without service.

3A. If, however, the Commission chooses to liberalize the rules somewhat by allowing more partition options and even earlier disaggregation, then limiting the changes to the entrepreneur's blocks of "C" and "F" licensees and even limiting the qualifications of the "partitionee" to the same qualifications as those of a C-F bidder would solve the issue of "equal opportunity" and would prevent the abuses we've demonstrated herein.

Conclusion

We strongly support those respondents that say maintaining the status quo by making no rule changes mid stream is the best course of action the Commission can take. In support of that position, we've tried to show the Commission real examples of the negative consequences these proposed changes would have, and have tried to do so without being overly strident.

Anger and betrayal are words that do not do justice to the feelings of the North Dakota PCS LP partners. Small rural telcos who feel that if a change to the rules is done now, as this document shows, may well have just committed their companies to a \$13 million loss, that was only a loss because of the Commission's action.

This writer has not been specifically informed of the position of the North Dakota PCS LP if the existing rules are changed, but if the reader were faced with a situation in which you must choose between the possibility of losing your job because the Commission's rule change wiped out several years of the net profits of your telephone company because of a PCS license investment, or fighting back with every tool at your disposal, which would you choose?

Respectfully Submitted,

Michael P. Rappe



► **Rural Cellular Corp.**, Alexandria, Minn., and **American Portable Telecom Inc. (APT)** said they have signed a letter of intent to establish **Wireless Alliance LLC**, a joint venture to build and operate **Personal Communications Service** networks in Duluth, Fargo and Grand Forks, N.D., and Superior, Wis. Subject regulatory approvals, **Wireless Alliance** will be 51 percent owned by **Rural Cellular** and 49 percent owned by **APT**, with **Rural Cellular** responsible for managing **Wireless Alliance**.

from
Minneapolis Star Tribune
8/27/96